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PUBLIC UTILITIES
COMMISSION

2009 OCT 29 P 3:43

FILED

BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII


In the Matter of the Application of:	)	DOCKET NO. 2009-0048
)	
MOLOKAI PUBLIC UTILITIES, INC.,	)	INTERVENOR WEST MOLOKAI
	)	ASSOCIATION'S AFFIDAVITS
for review and approval of rates	)	REQUIRED PURSUANT TO
increases; revised rate schedules; and	)	ORDERING CLAUSE 3(B) OF ORDER
revised rules.	)	GRANTING INTERVENTION, FILED
	)	OCTOBER 16, 2009; CERTIFICATE
	)	OF SERVICE

INTERVENOR WEST MOLOKAI ASSOCIATION'S AFFIDAVITS REQUIRED
PURSUANT TO ORDERING CLAUSE 3(B) OF ORDER GRANTING
INTERVENTION, FILED OCTOBER 16, 2009

Comes now West Molokai Association, an intervenor in the above-captioned matter, by and through its legal counsel, William W. Milks, to file affidavits in response to Ordering Clause 3(B) in the Hawaii Public Utility Commission's "Order Granting Interventions," filed October 16, 2009.

Attached are two affidavits, one by William W. Milks, Esq. (covering matters related to the water rate investigation) and Gilbert D. Butson, Esq., (covering matters related to the Hawaii Commission on Water Resource Management).

DATED: Honolulu, Hawaii, October 29, 2009.


William W. Milks, Counsel
West Molokai Association

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BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of:)	DOCKET NO. 2009-0048
)	
MOLOKAI PUBLIC UTILITIES, INC.,	)	AFFIDAVIT OF WILLIAM
for review and approval of rates	)	W. MILKS, ESQ.
increases; revised rate schedules; and)	
revised rules.)	
_____)	

AFFIDAVIT OF WILLIAM W. MILKS, ESQ.

STATE OF HAWAII)	
	)	SS
CITY AND COUNTY OF HONOLULU)	

William W. Milks, being first duly sworn on oath and knowing the penalties of perjury, asserts the following representations as truthful:

1. Your Affiant is an attorney-at-law, licensed to practice in the State of Hawaii since 1973.
2. Your Affiant is competent to testify and has personal knowledge of matters asserted herein.
3. Your Affiant has been retained by West Molokai Association, Inc. ("Association"), to represent Association in matters related to water utility rates pending before the Public Utilities Commission.
4. Your Affiant was responsible for formulating argument and compiling facts to comply with the Subsection 6-HAR-61-55(b) requirements governing motions to intervene.


5. Your Affiant is responding to ordering paragraph 3(B) of the Commission's "Order Granting Interventions," which states that "WMA shall file with the Commission, with copies served upon the other parties, one or more affidavits that support the facts (and not arguments) set forth in its Motion to Intervene."
6. Association's Motion -- fifteen pages in length -- relied heavily upon numerous sources of information, including (a) statements at the September 3, 2009, Kaunakakai public hearing, conducted by the Hawaii Public Utilities Commission, (b) representations and quantifiable data contained in the application of Molokai Public Utilities, Inc., and (c) concerns expressed by members of Association.
7. Based upon the utility's application, commentary at the public hearing, and the experience of the Association members, your Affiant has good cause to believe that water quality; financial records; the utility-proposed adjustment clauses; proposed rates; water losses; the enforceability of agreements between and among the utility, its parent corporation, and the Hawaii Department of Agriculture; the competency MPU's management and its owner's apparent inattention and expressed disinterest in utility operations; MPL's (and its predecessors') purported breach of agreements it has with the County of Maui, are all valid concerns of Association.
8. Your Affiant has been informed and has good cause to believe (a) that there are a few members of Association who are active in the defacto organization named "Stand For Water" (e.g. "Peter Johnson," Steve Morgan, et al.), (b) that the number of such individuals is small, (c) that it is difficult for Association to ascertain overlapping membership due to (i) Association members generally being listed by formal names (e.g. "Bevan P. Johnson"), (ii) the names of all of the actual members of "Stand For Water" being unknown to Association, (iii) some Association members may have interests in the services of both MPU and WOM, and (iv) membership in the Association is based on ownership of real estate, but renters residing in properties owned by Association's members, may be rate payer's of MPU and members of "Stand For Water."

9. Your Affiant knows that the outcome of this proceeding will impact Association's membership.
10. Your Affiant knows that the most appropriate forum for the above-identified issues to be heard is the Commission-ordered evidentiary hearing.
11. Your Affiant knows the intent of Association is to develop a sound record without unnecessarily duplicating the efforts of other parties, and to do so without causing delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


WILLIAM W. MILKS

Subscribed and sworn to before me this
29th day of October, 2009.

L.S. 
Name: Fern Y. F. Kashiwamura
Notary Public, State of Hawaii

My commission expires: 10/1/2011

Doc. Date: 10/29/09 # Pages: 3
Fern Y.F. Kashiwamura First Circuit
Doc. Description: Affidavit of
William W. Milks

L.S.  10/29/09
Notary Signature Date
NOTARY CERTIFICATION

William W. Milks
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Tel: (808) 526-3923
Fax: (808) 523-2088

BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of:

MOLOKAI PUBLIC UTILITIES, INC.,

For review and approval of rates
increases; revised rate schedules; and
revised rules.

DOCKET NO. 2009-0048

AFFIDAVIT OF GILBERT D.
BUTSON

AFFIDAVIT OF GILBERT D. BUTSON

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

GILBERT D. BUTSON, being first duly sworn on oath, asserts the following representations as truthful:

1. Your Affiant is an attorney licensed to practice in the State of Hawaii since 1972, and has personal knowledge of the facts asserted herein.
2. Your Affiant is a partner of O'Connor Playdon & Guben LLP, a law firm retained by West Molokai Association, in a retainer agreement dated

May 19, 2008, with the specified scope of services as follows: To advise West Molokai Association about remand proceedings before the Commission on Water Resource Management ("COWRM") in Contested Case Hearing ("CCH") M0-97-01, monitor same, and to seek intervention in that administrative proceeding if necessary.

3. CCH M0-97-01 is the proceeding in which the Applicant is seeking a Water Use Permit to extract groundwater from a well commonly referred to as "Well 17".

4. Water from Well 17 is used, in part, to supply Molokai Public Utilities, Inc. (a certificated public utility) water need service to the Kaluakoi region on the Island of Molokai.

5. Your Affiant has closely monitored the proceedings and activities of the permitting process after remand to the COWRM by the Hawaii Supreme Court from its Decision dated February 26, 2007 in Docket No. 24856, and informs the West Molokai Association's Board of Directors on matters pertaining to the Board's interest in such proceedings.

6. By letter dated May 27, 2008, Peter Nicholas informed the COWRM that "Molokai Public Utilities (MPU) does not intend to continue to pursue [CCH M0-97-01] on remand" for the reason that it does not have the resources to pursue what was likely an "expensive remand proceeding."

7. In light of this statement made by Mr. Nicholas, your Affiant, on June 4, 2008 by letter to the staff attorney at the COWRM, requested that Affiant's law firm be permitted, on behalf of West Molokai Association, to monitor the remand proceedings in CCH M0-97-01, receive copies of all communications, memoranda, orders and pleadings filed therein, and if necessary, intervene in that proceeding in order to pursue continued delivery of water from Well No. 17 for domestic use by members of the West Molokai Association.

8. Your Affiant has advised and apprised other counsel for the West Molokai Association on matters before the Hawaii Public Utilities Commission.

9. Your Affiant provided William W. Milks, Esq. access to the files maintained by O'Connor Playdon & Guben LLP on behalf of West Molokai Association, and has consulted with William W. Milks, Esq. regarding the positions and policies being pursued by individual parties and governmental agencies in such proceedings.

10. West Molokai Association is currently not a party to either the permitting process before the COWRM in CCH-M0-97-01, nor the Hawaii Supreme Court appeal taken by parties to the administrative proceeding (Supreme Court Docket No. 24856).

11. Your Affiant is well-versed in proceedings before the COWRM, appellate law, and Hawaii Water Code, HRS Chapter 174C, and is available to testify on such matters if and when called upon to do so.

Further Affiant sayeth naught.

Gilbert D. Butson
GILBERT D. BUTSON

Subscribed and sworn to before me this
27th day of October, 2009.

Jian Ming Kwok
Print Name: Jian Ming Kwok
Notary Public, State of Hawaii

My commission expires: June 15, 2012



Doc. Date: 10/27/09 # Pages: 4
Notary Name: Jian Ming Kwok
First Circuit

Doc. Description: AFFIDAVIT OF
GILBERT D. BUTSON

Jian Ming Kwok 10/27/09
Notary Signature Date
NOTARY CERTIFICATION



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, together with this Certificate of Service, has been or will this day be served either by hand delivery or by United States mail, postage prepaid, to the following:

Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street,
Honolulu, Hawaii 96813


Michael H. Lau, Esq.
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Margery S. Bronster, Esq.
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Timothy Brunnert, President
Stand For Water
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Maunaloa, Hawaii 96770

Andrew V. Beaman, Esq.
Chun Kerr Dodd Beaman & Wong, LLLP
Topa Financial Center
Fort Street Tower
745 Fort Street, 9th Floor
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, October 29, 2009.


WILLIAM W. MILKS, Attorney for Applicant
Molokai Public Utilities, Inc.